

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT L. HOLBROOK,)	
)	
Plaintiff,)	
)	Civil Action No. 10-265 Pittsburgh
v.)	
)	
CAPTAIN JOHN KINGSTON, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on February 24, 2010 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [ECF No. 30], filed on August 4, 2011, recommended that the motion to dismiss [ECF No. 25] be granted in part and denied in part. Specifically, the Magistrate Judge recommended that the interference with legal and non-legal mail claims be dismissed since they are barred by the statute of limitations, and that the retaliation claim remain pending as it is not completely barred by the statute of limitations and Plaintiff has not failed to state a *prima facie* claim upon which relief may be granted. The parties were allowed fourteen (14) days from the date of service to file objections. Plaintiff filed objections [ECF No. 31] on August 18, 2011, and Defendants filed a response to the objections on September 6, 2011 [ECF. No. 32].

After de novo review of the documents in the case, together with the Report and Recommendation and objections thereto, I agree that the motion to dismiss should be denied with respect to the retaliation claim and adopt the Magistrate Judge's Report and Recommendation with respect to this claim. The Report and Recommendation is not

adopted, however, with respect to the interference with legal and non-legal mail claims. The Court finds that the continuing violation doctrine may apply to these claims as the Plaintiff has alleged that he was on mail watch until March 2008.

AND NOW, this 15th day of September, 2011;

IT IS HEREBY ORDERED that the motion to dismiss [ECF No. 25] is DENIED with respect to the interference with legal and non-legal mail claims and DENIED with respect to the retaliation claim.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge